

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>DARRIAN JOHNSON,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>SHERIFF MIKE MILSTEAD; THE ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA,</p> <p style="text-align: center;">Respondents.</p>	<p style="text-align: center;">4:24-CV-04094-ECS</p> <p style="text-align: center;">OPINION ADOPTING REPORT AND RECOMMENDATION IN FULL AND DISMISSING PETITIONER'S PETITION</p>
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Petitioner Darrian Johnson filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging a state court conviction for possession of a controlled substance entered on July 13, 2021, and perhaps a 2007 aggravated assault conviction. Doc. 1 at 1, 9. The matter was referred to a United States Magistrate Judge under 28 U.S.C. § 636(b)(1)(B) and the District of South Dakota's Civil Local Rule of Practice 72.1.A.2(b), which designates to the magistrate judge the duty to prepare proposed findings and recommendations for the disposition of habeas petitions. Magistrate Judge Veronica L. Duffy screened the petition and issued an order to show cause why the petition should not be dismissed as untimely, procedurally defaulted, or both. Doc. 6. After Johnson and Respondents responded to the order to show cause, Docs. 10, 11, and 18, Magistrate Judge Duffy submitted a report and recommendation that Johnson's petition be dismissed with prejudice. Doc. 20 at 17. Judge Duffy explained that the Court has no jurisdiction to entertain claims regarding the 2007 conviction and claims regarding the 2021 conviction are time-barred and not subject to equitable tolling. Id. The time for objecting to the report and recommendation has passed. See id. at 17–18. No objections have been filed in this

case. The Court has considered the case de novo and adopts the report and recommendation in full. Thus, it is

ORDERED that the Magistrate Judge's report and recommendation (Docket 20) is adopted in full and Johnson's petition under 28 U.S.C. § 2254 (Docket 1) is dismissed with prejudice. Because the Court finds that Johnson has not made a substantial showing of the denial of a constitutional right,

IT IS FURTHER ORDERED that no certificate of appealability will issue. 28 U.S.C. § 2253(c)(2).

DATED August 23, 2024.

BY THE COURT:



ERIC C. SCHULTE
UNITED STATES DISTRICT JUDGE